

Chair that the scope is rather narrow. However, the Chair feels that the amendment offered by the gentleman from Ohio has to do with the basic purpose of title 3 of the bill H.R. 8601.

The Chair overrules the point of order.

Resolution Making Consideration of Amendment in Order But Not Waiving Points of Order; Effect; Adoption of One Amendment in Nature of Substitute as Precluding the Offering of Another

§ 45.12 A resolution reported from the Committee on Rules which merely makes in order the consideration of a particular amendment in the nature of a substitute but does not waive points of order or otherwise confer a privileged status upon the amendment does not, in the absence of a legislative history establishing a contrary intent by that committee, alter the principles that recognition to offer an amendment under the five-minute rule is within the discretion of the Chairman of the Committee of the Whole and that adoption of one amendment in the nature of a substitute precludes the offering of another.

The proceedings of May 23, 1978, relating to H. Res. 1188, are discussed in § 45.3, *supra*.

§ 46. Factors in Chair's Ruling; Refusal by Chair To Rule; Anticipatory and Hypothetical Rulings

The Chair ordinarily does not give anticipatory rulings and declines to prejudge the germaneness of any amendment not actually before the House. The Chair does not indicate in advance what his ruling would be as to the germaneness of an amendment if offered.⁽³⁾

For example, where there was pending to a bill both an amendment in the form of a new section and a substitute therefor, the Chair⁽⁴⁾ declined to indicate, in response to a parliamentary inquiry, whether the pending substitute, if defeated, would thereafter be germane and in order if subsequently offered as an amendment in the form of a new section.⁽⁵⁾ In this instance, there

3. 84 CONG. REC. 8706, 8707, 76th Cong. 1st Sess., July 6, 1939 (remarks of Speaker Sam Rayburn (Tex.) in response to a parliamentary inquiry by Mr. Costello).

4. William H. Natcher (Ky.).

5. See the proceedings at 116 CONG. REC. 25811, 91st Cong. 2d Sess., July 27, 1970.

was pending, in addition to the above, an amendment to the substitute. The Chairman did indicate, in response to parliamentary inquiries, that defeat of the amendment to the substitute and of the substitute would not preclude the offering of another germane substitute; and that adoption of the amendment in the form of a new section would not preclude the offering of additional germane amendments as new sections to the bill.

Accordingly, the Chair does not anticipate the content of a motion to recommit and will not rule in advance as to whether particular instructions which might be offered as part of such a motion would be germane.⁽⁶⁾

Similarly, the Chair on occasion has indicated that it is not within its province to advise Members as to where an amendment to a bill could properly be offered.⁽⁷⁾

The Chair rules on points of order as raised and does not determine whether an amendment

ruled out at one point as not germane may be offered at some later stage.

The Chair, however, may sometimes be seen to depart from the above principles. Thus, the Chairman on infrequent occasion has expressed an opinion as to whether a proffered amendment might be germane to a different part of the bill.⁽⁸⁾ For example, the Chairman, while ruling out an amendment as not germane to a particular part of a bill, has indicated that the amendment would be germane to a later section of the bill. On Mar. 23, 1933, during consideration of the District of Columbia Beer Bill,⁽⁹⁾ the Chairman⁽¹⁰⁾ first held that an amendment imposing general restrictions on the sale of beverages was not germane to that part of the bill which merely described types of beverage licenses to be issued; then he stated that the amendment was germane to a later section of the bill and could be offered during consideration of such section.⁽¹¹⁾

Similarly, while ruling an amendment out of order, the

6. See the remarks of Speaker John W. McCormack (Mass.) at 109 CONG. REC. 25249, 88th Cong. 1st Sess., Dec. 19, 1963, in response to a parliamentary inquiry by Mr. Halleck. See also §45.7, *supra*.

7. See the remarks of Chairman Fritz G. Lanham (Tex.) at 84 CONG. REC. 7501, 76th Cong. 1st Sess., June 19, 1939.

8. See §21.8, *supra*.

9. H.R. 3342 (Committee on the District of Columbia).

10. Ralph Fulton Lozier (Mo.).

11. 77 CONG. REC. 835, 73d Cong. 1st Sess., Mar. 23, 1933.

Chairman on occasion has indicated how the amendment could properly be offered.⁽¹²⁾

In other instances, the Chair may decline to rule. Thus, the Speaker does not rule on such questions of germaneness as may be the province of the Chairman of the Committee of the Whole.⁽¹³⁾

The Chair does not rule on the question as to whether an amendment is ambiguous.⁽¹⁴⁾ And the Chair has declined to pass upon constitutional questions.⁽¹⁵⁾

Chair Decides Issue on Basis of Text, Not Speculation as to Motives Behind Amendment

§ 46.1 The germaneness of an amendment is determined by the relationship between its text and the portion of the bill to which offered, and is not judged by motives for offering the amendment which circumstances may suggest, nor by the fact that the amendment, offered to a public bill, may in substance be characterized as private legislation benefiting individuals.

12. See § 18.15, *supra*.

13. See § 45.7, *supra*.

14. See § 46.4, *infra*.

15. See §§ 30.21, 33.8, 35.86, *supra*.

The proceedings of May 30, 1984, relating to H.R. 5167, the Defense Department authorization for fiscal 1985, are discussed in § 3.45, *supra*.

Chair Decides Issue on Basis of Text, Not Conjecture as to Further Legislation That Might Result From Amendment

§ 46.2 In ruling on a question of germaneness, the Chair confines his analysis to the text of the amendment and is not guided by conjecture as to other legislation or administrative actions which might—but are not required to—result from the amendment.

On July 27, 1977,⁽¹⁶⁾ it was held that to a title of a bill⁽¹⁷⁾ reported from the Committee on Agriculture providing for benefits under, and administration of, the food stamp program, an amendment which provided for recovery of benefits from persons whose income exceeded specified levels was germane even though it required the Secretary of the Treasury and, impliedly, the Internal Revenue

16. 123 CONG. REC. 25249, 25252, 95th Cong. 1st Sess.

17. H.R. 7171, the Agriculture Act of 1977.

Service to collect any liability imposed by the amendment's provisions:

MR. [JAMES M.] JEFFORDS [of Vermont]: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Jeffords to the amendment offered by Mr. Foley: In title XII, page 28, insert after line 8 the following new section:

"RECOVERY OF BENEFITS WHERE INDIVIDUAL'S ADJUSTED GROSS INCOME FOR YEAR EXCEEDS TWICE POVERTY LEVEL

"Sec. 1210(a)(1) if—

"(A) any individual receives food stamps during any calendar year and

"(B) such individual's adjusted gross income for such calendar year exceeds the exempt amount,

then such individual shall be liable to pay the United States the amount determined under subsection (b) with respect to such individual for such calendar year. Such amount shall be due and payable on April 15 of the succeeding calendar year and shall be collected in accordance with the procedures prescribed pursuant to subsection (g). . . .

MR. [FORTNEY H.] STARK [of California]: Mr. Chairman, I reserve a point of order. I would like to engage the author of the amendment in colloquy. . . .

Mr. Chairman, I would like to ask the distinguished gentleman from Vermont who or what branch of Government the gentleman feels would collect this money from the people?

MR. JEFFORDS: Under the amendment, the Department of the Treasury would be required to collect the money.

MR. STARK: It would be the Treasury Department and in no way did the gentleman intend that the Internal Revenue Service participate in any of the collection or in collecting the forms or collecting revenue?

MR. JEFFORDS: No, on the contrary, it is my understanding and belief that the Internal Revenue Service would be charged with and do the collecting. . . .

MR. STARK: Mr. Chairman, I make a point of order that the jurisdiction of the Internal Revenue Service lies wholly within the jurisdiction of the Committee on Ways and Means.

This amendment, as the gentleman has stated it, would be counting on the Internal Revenue Service to perform the functions as put down under this amendment. The amendment would not be in order and would not be within the jurisdiction of this committee. . . .

MR. JEFFORDS: . . . As I understand the rules here, I can ask for an amendment that can be proposed, as can anybody, to the collection. We could make the State Department or anyone else do the collection, but we cannot do what I have not done, and very specifically have not done in this amendment, which is to change any statute of the way it is done, which is under the jurisdiction of the Committee on Ways and Means. If I am wrong on this, there are so many places in this bill where the same thing is done that I do not know why a number of Members have not raised points of order.

We have asked the Postal Service to do something; we have asked the social security office to do things; we have mandated different agencies all over

the place. We do not interfere with any statutes which are under committee jurisdiction of other committees. I have not done so here. The question is, do we change any statute which is under the jurisdiction of the Ways and Means Committee, and we do not. They are the guardian over those statutes, but they are not the guardian over any agency which happens to be involved with those statutes.

MR. STARK: Mr. Chairman, I think it is quite clear that the gentleman, in terms of both the committee report and in his response to questions here, in his statement on the floor that this amendment, although it really says that the Secretary of the Treasury shall collect any liability, clearly the intention is that the Internal Revenue Service shall collect W-2 forms, match them against income figures which are now under the law not to be given even to the Secretary of Treasury, but are for collecting income tax and Internal Revenue matters.

Clearly, the intent of the amendment is to direct the Internal Revenue Service to participate in that. The jurisdiction of the Internal Revenue Service and all matters pertaining thereto is under the Committee on Ways and Means. I would ask that this amendment be ruled out of order on that basis.

THE CHAIRMAN:⁽¹⁸⁾ The Chair is ready to rule.

The gentleman from California makes the point of order that the amendment offered by the gentleman from Vermont (Mr. Jeffords) is not germane to the food stamp title of the pending bill. The thrust of the gentle-

man's point of order is that the collection procedure for overpayments of food stamp benefits to persons above the poverty level involves responsibilities of the Treasury Department, and in effect mandates the establishment of regulations which would involve the disclosure of tax returns and tax information and utilization of the Internal Revenue Service—all matters within the jurisdiction of the Committee on Ways and Means.

The Chair notes that the amendment does contain the provision that "nothing in this section shall be construed to affect in any manner the application of any provision of the Internal Revenue Code of 1954," and it seems to the Chair to follow that, under the explicit provisions of the amendment. Secretary of the Treasury would therefore have to establish an independent collection procedure separate and apart from the mandated use of the Internal Revenue Service. The Chair does not have to judge the germaneness of the amendment by contemplating possible future legislative actions of the Congress not mandated by the amendment.

In the opinion of the Chair, the authority of the Secretary of the Treasury under the rules of the House as collector of overpayments of any sort is not subject explicitly and exclusively within the jurisdiction of the Committee on Ways and Means under rule X, and even if this were true, committee jurisdiction is not an exclusive test of germaneness where, as here, the basic thrust of the amendment is to modify the food stamp program—a matter now before the Committee of the Whole.

The Chair overrules the point of order.

18. Frank E. Evans (Colo.).

Anticipatory Rulings

§ 46.3 While the Chair will not ordinarily render anticipatory rulings as to the propriety of amendments which have not been offered, the Chair may respond to a parliamentary inquiry as to the germaneness and form of an amendment (in the nature of a substitute) which has been printed in the Record and is at the desk and is manifestly not in order as a substitute for a pending perfecting amendment.

On May 9, 1979,⁽¹⁹⁾ during consideration of House Concurrent Resolution 107⁽²⁰⁾ in the Committee of the Whole, the proceedings described above occurred as follows:

MRS. [MARJORIE S.] HOLT [of Maryland]: Mr. Chairman, I offer a perfecting amendment.

The Clerk read as follows:

Perfecting amendment offered by Mrs. Holt: Strike out sections 1 through 5 and insert in lieu thereof the following:

That the Congress hereby determines and declares, pursuant to section 301(a) of the Congressional Budget Act of 1974, that for the fiscal year beginning on October 1, 1979—

19. 125 CONG. REC. 10485, 10486, 96th Cong. 1st Sess.

20. The first concurrent resolution on the Budget for fiscal 1980.

(1) the recommended level of Federal revenues is \$508,200,000,000 and the amount by which the aggregate level of Federal revenues should be decreased is \$6,500,000,000. . . .

Sec. 4. In 1979, each standing committee of the House of Representatives shall report by July 1 to the House of Representatives its recommendations and the status of its actions with respect to new spending authority including all legislative savings, and other reforms, targeted by the first concurrent resolution on the budget for the fiscal year ending on September 30 of that same year. This report shall include any additional legislative savings which the committee believes should be considered by the House in the programs for which such committee has responsibility.

In 1980, each standing committee of the House of Representatives shall include in its March 15 report to the Budget Committee of the House of Representatives specific recommendations as to all possible legislative savings for the programs for which the committee has responsibility. . . .

MR. [PARREN J.] MITCHELL of Maryland: Mr. Chairman, this gentleman had planned to offer his amendment as a substitute for the Holt-Regula amendment.

It is my understanding that when the gentlewoman spoke to her amendment, the gentlewoman called it a perfecting amendment. I do not know whether that embraces fiscal year 1979 and 1980. My amendment does.

This inquiry is whether mine can be offered as a substitute to the Holt-Regula amendment.

THE CHAIRMAN: ⁽¹⁾ The Chair will advise the gentleman from Maryland

1. William H. Natcher (Ky.).

(Mr. Mitchell) that since the gentleman's amendment which is at the desk would go to the fiscal years 1979 and 1980 and is in the nature of a substitute for the entire resolution, it would not be germane or otherwise in order, since the amendment offered by the gentlewoman from Maryland (Mrs. Holt) is perfecting in nature and only goes to the fiscal year 1980.

Question of Ambiguity: "Provisions" of Supreme Court

§ 46.4 To the proposition that specified funds shall not be allotted to any state failing to comply with the "provisions" of the Supreme Court, an amendment to strike "provisions" and insert "decisions" was held to be germane without regard to possible ambiguities in the terms.

In the 84th Congress, during proceedings relating to a bill⁽²⁾ to authorize federal aid to states and local communities in financing a program of school construction, the proposition and amendment thereto as described above came under consideration.⁽³⁾ Mr. Ross Bass, of Tennessee, made the point of order that the proposed amendment was not germane to

2. H.R. 7535 (Committee on Education and Labor).

3. See 102 CONG. REC. 11873, 11875, 84th Cong. 2d Sess., July 5, 1956.

the bill.⁽⁴⁾ Subsequently, after a ruling by The Chairman,⁽⁵⁾ that the amendment was germane, Mr. Bass stated:

I make the point of order that the word "provisions" is ambiguous and has no meaning whatever and would make the amendment not germane.

The Chairman responded that,

The Chair does not rule on the question of ambiguity. It is a question of germaneness solely, and the Chair has ruled that the amendment is germane.

Question of Consistency

§ 46.5 While the Chair must rule on points of order which call into question the germaneness of an amendment to the proposition to which offered, the Chair may decline to make a germaneness ruling when the point of order as stated goes to the consistency (and not the relevancy) of the amendment.

On Oct. 5, 1977,⁽⁶⁾ during consideration of H.R. 8410⁽⁷⁾ in the Committee of the Whole, the Chair, in holding that a proper point of order had not been raised, reiterated the principle that the

4. *Id.* at p. 11875.

5. Francis E. Walter (Pa.).

6. 123 CONG. REC. 32495, 95th Cong. 1st Sess.

7. The Labor Reform Act of 1977.

Chair does not rule on the consistency of an amendment with the proposition to which offered. The proceedings were as follows:

MR. GARY A. MYERS [of Pennsylvania]: Mr. Chairman, I offer an amendment to the amendment offered as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. Gary A. Myers to the amendment offered by Mr. Ford of Michigan as a substitute for the amendment offered by Mr. Ashbrook: Page 17, beginning on line 10, strike out "during a period of time that employees are seeking representation by a labor organization," and insert in lieu thereof "within the 7-day period prior to a representation election."

Page 17, line 15, insert immediately before the semicolon the following: ", except that no rule issued pursuant to the requirements of this paragraph shall require an employer to reimburse employees for time used to obtain such information from such labor organization". . . .

MR. [FRANK] THOMPSON [Jr., of New Jersey]: Mr. Chairman, my point of order is that this amendment is inconsistent with the substitute as we have just amended it. It expands the substitute to include decertification and other matters which are not relevant. . . .

MR. GARY A. MYERS: Mr. Chairman, my opinion is that this simply limits the provisions which the substitute would provide and that it does not affect the language of the substitute. On the contrary, it expands upon it. It simply makes an addition to the substitute as a section of the bill.

THE CHAIRMAN: ⁽⁸⁾ The Chair is ready to rule.

The Chair would like to advise the gentleman from New Jersey (Mr. Thompson) that the Chair cannot rule on the consistency of the amendment offered by the gentleman from Pennsylvania (Mr. Gary A. Myers) to the substitute amendment offered by the gentleman from Michigan (Mr. Ford).

Therefore, the Chair would have to state that the gentleman has not raised a proper point of order.

Parliamentarian's Note: While Mr. Thompson's remarks did make reference to the relevance of the amendment, the Chair apparently did not take note of the reference, and understood the point of order to relate only to the consistency of the two propositions.

Question of "Workability" of Amendment

§ 46.6 In ruling on the germaneness of an amendment, the Chair does not consider the workability of an amendment which establishes as a measure of availability of spending authority in the bill a referenced level contained in another document relating to that spending authority, so long as the amendment does not directly affect other provisions of law or impose conditions predicated upon other unrelated actions of Congress.

The proceedings of June 11, 1987, relating to H.R. 4, the Hous-

8. William H. Natcher (Ky.).

ing Authorization Act are discussed in § 34.2, *supra*.

Probable Effect of Bill and Amendment—Change in Law, Permanent in Form, Construed as Temporary

§ 46.7 Although the Chair will not ordinarily look behind the text of a bill and consider the probable effect of its provisions, or amendments thereto, in determining issues of germaneness, the Chair has ruled that an amendment which in form amounted to a permanent change in law could in fact be understood to be a temporary change in law, in light of the fundamental purpose demonstrated by prior legislative treatment of the subject in question (the statutory ceiling on public debt), and thus could properly be offered to a bill whose fundamental purpose was to provide a temporary increase in the statutory ceiling on the debt.

During consideration of H.R. 2360⁽⁹⁾ in the Committee of the Whole, the Chair overruled a point of order in the circumstances described above. The

9. Extension of the Public Debt Limit.

proceedings of May 13, 1987,⁽¹⁰⁾ were as follows:

THE CHAIRMAN:⁽¹¹⁾ Pursuant to House Resolution 165, the bill is considered as having been read for amendment under the 5-minute rule.

The text of H.R. 2360 is as follows:

H.R. 2360

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) during the period beginning on the date of the enactment of this Act and ending on July 17, 1987 the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be equal to \$2,320,000,000,000.

(b) Effective on and after the date of the enactment of this Act, section 8201 of the Omnibus Budget Reconciliation Act of 1986 is hereby repealed. . . .

MR. [DAN] ROSTENKOWSKI [of Illinois]: Madam Chairman, I offer an amendment. . . .

Amendment offered by Mr. Rostenkowski: Strike out subsection (a) of the first section of the bill and insert the following: "That (a) subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof '\$2,578,000,000,000'."

Amend the title to read as follows: "A bill to increase the statutory limit on the public debt." . . .

MR. [CONNIE] MACK [of Florida]: Madam Chairman, I make a point of order against the amendment on the grounds that it violates clause 7 of the

10. 133 CONG. REC. 12344, 12345, 100th Cong. 1st Sess.

11. Patricia Schroeder (Colo.).

rule XVI, the germaneness rule, and ask to be heard on my point of order.

Madam Chairman, subsection (a) of H.R. 2360, the reported bill, makes a temporary and indirect change in the permanent public debt limit through July 17, 1987.

The amendment offered by the gentleman from Illinois [Mr. Rostenkowski] makes a permanent and direct change in existing law. It directly amends title 31, section 3101 of the United States Code. The base does not.

Let me cite three precedents in support of my position:

Procedure in the House, 97th Congress, chapter 28, section 19.1:

To a bill proposing a temporary change in law, an amendment making permanent changes in that law is not germane.

Chapter 28, section 19.3:

To a bill reported from the Committee on Ways and Means providing for a temporary increase in the public debt ceiling for the current fiscal year not directly amending the Second Liberty Bond Act, an amendment proposing permanent changes in that Act and also affecting budget and appropriations procedures was held not germane.

Chapter 28, section 19.4:

To a proposition authorizing appropriations for one fiscal year, an amendment making permanent changes in law is not germane. . . .

MR. ROSTENKOWSKI: Madam Chairman, in 1983 the rule providing for the consideration of H.R. 2990, to increase the public debt limit, provided for a waiver of clause 7 of rule XVI, the germaneness rule, against an amendment in the nature of a substitute rec-

ommended by the Committee on Ways and Means. The germaneness waiver was necessary because the committee amendment to repeal the temporary debt limit and to make the entire ceiling permanent was not germane to the original bill which only provided for an increase in the temporary debt limit.

With the enactment of H.R. 2990 into law in 1983, the distinction between the temporary and permanent public debt limit was eliminated. It was only with the passage of the 1986 Budget Reconciliation Act that we again temporarily increased the public debt limit.

I would argue that the committee amendment to the bill before us is germane because, first of all, the fundamental purpose of the committee amendment is consistent with that of the bill, namely a temporary increase in the public debt. The bill before us provides debt authority, which is estimated to be sufficient until July 17, 1987. The committee amendment provides debt authority until October 1, 1988. Both the bill and the amendment provide debt authority, which eventually will prove to be insufficient and, therefore, both are temporary in nature. In addition, the bill has the effect of amending the same section of the United States Code as the committee amendment. Finally, I would argue that the amendment is germane because it passes the common sense test of not introducing a subject matter which is "different from that under consideration."

The issue before us is how long to increase the public debt. The amendment gives the House two choices on these issues. I urge the Chair to rule the amendment germane.

Ch. 28 §46

THE CHAIRMAN: If there are no further speakers on the germaneness issue, the Chair is ready to rule.

The gentleman from Florida [Mr. Mack] makes a point of order that the amendment offered by the gentleman from Illinois [Mr. Rostenkowski] is not germane. The amendment would directly amend existing law by striking the existing dollar limitation in section 3101 of title 31 of the United States Code and inserting a new dollar figure, with the intention to increase the Government's borrowing authority for an unspecified but necessarily temporary period of time.

However, the bill, H.R. 2360, in subsection (a), refers to, and in the opinion of the Chair, is tantamount to, a change in the same provision of the law as the amendment.

Both the bill and the amendment are based upon estimates of sufficiency of the total amount of borrowing authority over different periods of time. For this reason, the Chair believes the amendment to be closely related to the fundamental purpose of the bill, and to accomplish that purpose by amending the same section of law referenced in the bill.

Therefore, the Chair overrules the point of order.

Speaker Declines To Decide Questions That Are Province of Chairman of Committee of Whole; Hypothetical Questions

§ 46.8 The Chair may decline to give an opinion on hypothetical or anticipatory questions; and the Speaker has declined to rule on questions that are the province of, and must be decided by, the Chairman of the Committee of the Whole.

For an illustration of circumstances in which the Speaker may decline to give an opinion on certain questions, see the proceedings discussed at §45.7, *supra*.

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